82-5028

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. [redacted]

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SUPREME COURT, U.S.

HORACE BUTLER, Petitioner,

versus

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF Brief in Opposition HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING 1 COPIES IN AN ENVELOPE PROPERLY ADDRESSED WITH POSTAGE PREPAID THIS 4th DAY OF August, 1982

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ATTORNEY FOR Respondent

SWORN TO BEFORE ME THIS 4th DAY OF August, 1982

Karen Y. Newton
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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in State v. Butler, ___ S.C. ___, 290 S.E. 2d 1 (1982), as reproduced in Petitioner's Appendix A at pages 1-4.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I.

Did the trial court properly instruct the jury as to reasonable doubt?

II.

Has the South Carolina Supreme Court fully complied with the standards of review set down by this Court in Jackson v. Virginia?

ARGUMENT

I.

The trial court properly instructed the jury as to reasonable doubt.

Petitioner requests this Court to overturn his death sentence by declaring as reversible error the trial court's instructions on reasonable doubt. There is no dispute that these instructions were based upon clear decisions of the South Carolina Supreme Court and decades of practice which have solidified the instructions upon reasonable doubt given by the trial court as a mainstay of jury instructions in every criminal case. Petitioner not only asks this Court to reject these well settled prior decisions, but to also reverse his conviction based upon instructions which were undisputably proper under the decisions of the South Carolina Supreme Court.

Respondent respectfully submits that Petitioner's effort for new trial on this ground must fail.

Petitioner begins his discussion by citing In Re Winship, 397 U.S. 358 (1970), for the proposition that this Court is forced to reverse his death sentence in the instant case, because the reasonable doubt standard has now been raised to a constitutional level. Respondent respectfully submits that Winship, rather, stands for the proposition that the reasonable doubt standard has always been one of the most basic constitutional guarantees granted to a defendant in a criminal case. Winship, while re-emphasizing such, in no way changes this; nor does it reflect any differently upon

the prior decisions of the South Carolina Supreme Court now challenged by Petitioner through its citation. In effect, Respondent contends that the South Carolina Supreme Court has always fully recognized the constitutional dimensions of the reasonable doubt standard in its decisions that the language utilized by the trial court in the instant case was proper. State v. Griffin, ___ S.C. ___, 285 S.E. 2d 631, 633; State v. Starnes, 213 S.C. 304, 49 S.E. 2d 209, 214 (1948); State v. Senn, 32 S.C. 393, 11 S.E. 292 (1890); State v. Coleman, 240 S.C. 441 (1883).

Furthermore, even though Petitioner correctly cites several decisions of State and Federal courts enunciating disapproval of equating reasonable doubt with, for example, a substantial doubt; the same decisions have almost universally held that, particularly in absence of binding precedent that such instructions are improper, they do not result in reversible error in and of themselves. This contention was upheld most recently by this Court in Taylor v. Kentucky, 436 U.S. 478, 488, 56 L. Ed. 2d 468, 98 S. Ct. 1930 (1978).

Respondent respectfully submits that Petitioner has not demonstrated to this Court that the challenged jury instruction was improper or that, more importantly, the jury verdict was compromised as a result. The disputed instructions were well within the acceptable guidelines set down by this Court and, at any rate, do not justify reversal of Appellant's death sentence.

II.

The South Carolina Supreme Court has fully complied with the standards of review set down by this Court in Jackson v. Virginia.

Petitioner contends that the South Carolina Supreme Court has erroneously rejected the standard of review set down by this Court in Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); alleging that the standard of review applied in the instant case was inconsistent with that required by this Court in Jackson. Respondent respectfully submits that the standard of review utilized by the South Carolina Supreme Court in the instant case was entirely consistent with the requirements set down by this Court in Jackson and Petitioner's contention alleging otherwise is patently without merit.

Indicative of this is the precise language utilized by the South Carolina Supreme Court in its decision here:

> Appellant asserts there was insufficient evidence to submit the aggravating circumstance of rape to the jury. A trial court is concerned only with the existence of evidence, not its weight. State v. Gunter, 273 S.C. 347, 256 S.E. 2d 317 (1979). And the evidence must be viewed in the light most favorable to the State. State v. Hill, 268 S.C. 390, 234 S.E. 2d 219 (1977), cert. denied, 434 U.S. 870, 98 S. Ct. 211, 54 L. Ed. 2d 147 (1977). Any evidence direct or circumstantial reasonably tending to prove the guilt of the accused creates a jury issue. State v. Hill, supra.

Respondent contends that the standard set forth in State v. Hill, and enunciated by the South Carolina Supreme Court in the instant case, is precisely equivalent to the standard required by this Court in Jackson. Petitioner attempts to confuse this fact by citing language from a dissent in State v. Stewart, ___ S.C. ___, ___ S.E. 2d ___ (Cp. No. 21656, filed March 3, 1982) (Ness, J., dissenting); Justice Ness having written the opinion in the instant case. There, Justice Ness cited the "any evidence rule" as it was stated in State v. Bailey, 253 S.C. 204, 170 S.E. 2d 376 (1969). In Bailey, that rule was stated as follows:

> In considering this question it must first be stated that if there is any evidence which tends to establish the guilt of the defendant on the charges alleged a refusal to direct a verdict of acquittal is not an error of law. (citation omitted). There is no such error unless there is a total failure of competent evidence as to the charges alleged. (citation omitted). (Emphasis added).

It is submittedly clear that the standard of review for motions for directed verdict, still couched in terms of an "any evidence rule," evolved to a higher standard prior to this Court's decision in Jackson so as to require that said evidence must reasonably tend to prove the guilt of the accused. Respondent contends that Jackson merely provides that the relevant question as to sufficiency of the evidence in a criminal case is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. Id., 443 U.S. at 319, 99 S. Ct. at ___, 61 L. Ed. 2d at 573. This standard does not require

excluding every reasonable hypothesis other than the guilt of the accused. Id., 443 U.S. at 326, 99 S. Ct. at ___, 61 L. Ed. 2d at 578.

Respondent respectfully submits that the standard of review utilized by the Court in the instant case is equivalent to that required by this Court in Jackson; being a substantially heavier standard than that required by the South Carolina Supreme Court in Bailey, supra, and cited by Justice Ness in his dissent in Stewart, supra, to demonstrate that the evidence in that case would not satisfy even that lighter standard.

Respondent respectfully submits that the South Carolina Supreme Court has fully embraced, and in fact anticipated the standard of review required by this Court in Jackson. As stated by the Court,

> The trial court found: (1) the victim received a blow to her head (serious enough to cause brain damage) prior to death; (2) the Appellant was armed with a deadly weapon; (3) the presence of semen in the victim's vaginal area; (4) physician's testimony that the semen could have come from a male of Appellant's blood type, and (5) decedent was thereafter killed. There was sufficient evidence to submit the aggravating circumstance to the jury.

Respondent respectfully submits that, whether you state the standard as requiring "any evidence direct or circumstantial reasonably tending to prove the guilt of the accused creates a jury issue" or "whether, after viewing the evidence in the light most favorable to the procecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (these standards being submittedly identical), the issue of Petitioner's guilt of the aggravating circumstance of rape was properly submitted to the jury by the trial court

whose decision was properly affirmed by the South Carolina Supreme Court.

Petitioner's contentions alleging otherwise are submittedly without merit.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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